

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESSEX MARINA CITY CLUB, L.P.,)	Case No. 11-408 SC
)	
Plaintiff,)	ORDER RE: DEFENDANT'S
)	<u>MOTION TO DISMISS</u>
v.)	
)	
CONTINENTAL CASUALTY COMPANY,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Before the Court is a Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure by Defendant Continental Casualty Company ("Continental"). ECF No. 16 ("Mot."). Plaintiff Essex Marina City Club, L.P. ("Essex") filed an Opposition, and Continental filed a Reply. ECF Nos. 23 ("Opp'n"), 24 ("Reply"). For the following reasons, the Court GRANTS IN PART and DENIES IN PART Continental's Motion.

II. BACKGROUND

As it must on a Rule 12(b)(6) motion, the Court assumes the truth of the following well-pleaded facts taken from Essex's Complaint. ECF No. 1 ("Notice of Removal") Ex. A ("Compl.").¹

¹ Continental asks the Court to take judicial notice of various documents. See Mot. at 6. Essex does not oppose this request, and

Essex, a Palo Alto, California-based limited partnership, leased real property located in Marina Del Rey, California, under a long-term master lease between Essex's predecessor-in-interest and the County of Los Angeles. Id. ¶¶ 1, 6. Essex's lease was subject to a sublease between its predecessor-in-interest and Marina City Condominiums ("MCC"). Id. ¶ 6. Under this sublease, MCC had the right to assign its subleasehold interest, on a condominium-by-condominium basis, to individual condominium owners. Id. ¶ 7. Under a subleasehold deed of trust held by Essex, each condominium owner was required to pay Essex a monthly maintenance fee for common-area operating expenses, supplemental maintenance fees, a separate "ground rent," and other fees and expenses. Id. ¶ 8.

The Marina City Club Condominium Owners Association ("Association") is apparently an association of individual condominium owners.² In 1994, Essex's predecessor-in-interest and the Association entered into an agreement ("the 1994 Agreement") to establish a "Management Council" to collect maintenance fees and manage any common areas covered by the monthly maintenance fees. Id. ¶ 9. Under this Agreement, the Management Council would

joins in it with respect to one document -- the IndyMac complaint discussed below. Opp'n at 7 n.4. While generally a court may not consider material beyond the complaint when deciding a motion to dismiss, it may do so if "the plaintiff's claim depends on the contents of [the] document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document." Kniesel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005). Here, because Essex's claims depend on the contents of the documents in question and Essex does not dispute their authenticity, the Court GRANTS Defendant's request. However, because the Court may not take judicial notice of the truth of the facts recited within a judicially noticed document, Lee v. City of Los Angeles, 250 F.3d 668, 688-90 (9th Cir. 2001), it limits its review of these documents accordingly.

² Neither the Complaint nor the papers filed by the parties clearly identify or describe the Association.

1 consist of two members appointed by Essex's predecessor-in-interest
2 (and, subsequently, Essex) and two members of the Board of
3 Directors of the Association. Id. ¶ 10. The Management Council
4 was responsible for oversight and maintenance of the property,
5 processing of evictions, management of the operating budget, and
6 collection and enforcement of monthly maintenance fees and ground
7 rents. Id. ¶ 11.

8 Continental, an insurance company, issued a professional
9 liability policy to the Association for the period from November,
10 16, 2007 to November 16, 2008. Id. ¶ 18; Brisbin Decl. Ex. 1
11 ("Policy").³ The sole named insured identified in the Policy is
12 the Association. Id. An Endorsement to the Policy ("the
13 Endorsement") extended the definition of "insured" to include "any
14 Property Manager," as defined in the Endorsement. Id. ¶ 19.

15 In its capacity as a member of the Management Council, Essex
16 initiated foreclosure proceedings against a condominium owner who
17 allegedly failed to pay the required monthly fees and rent; the
18 condominium was sold at a foreclosure sale. Id. ¶¶ 12-13. In
19 February 2008, IndyMac Bank, F.S.B. ("IndyMac") filed a lawsuit
20 against Essex and others to set aside the foreclosure sale and
21 quiet title to the condominium ("the IndyMac proceedings"). Id. ¶
22 14. Essex submitted a claim under the Policy to Continental for
23 defense and indemnity of the IndyMac proceedings, and Continental
24 denied coverage. Id. ¶ 22-26. Essex then commenced this action,
25 seeking declaratory relief that Continental owed a duty to defend
26 it in the IndyMac proceedings and alleging that Continental
27

28 ³ Michael K. Brisbin ("Brisbin"), counsel for Continental, filed a
declaration in support of its Motion. ECF No. 17.

1 breached its contract and the implied covenant of good faith and
2 fair dealing when it denied Essex's claim. See id.

3 In its Motion to Dismiss, Continental asserts that the facts
4 pleaded in Essex's Complaint fail to support a claim.
5 Specifically, Continental argues that Essex is not a named insured
6 or additional insured under the Policy and thus has no standing to
7 bring claims for breach of contract and bad faith. Continental
8 also argues that the claim for declaratory relief is duplicative
9 with Essex's claim for breach of contract. See Mot.

11 **III. LEGAL STANDARD**

12 A motion to dismiss under Federal Rule of Civil Procedure
13 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
14 Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based
15 on the lack of a cognizable legal theory or the absence of
16 sufficient facts alleged under a cognizable legal theory.
17 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
18 1990). "When there are well-pleaded factual allegations, a court
19 should assume their veracity and then determine whether they
20 plausibly give rise to an entitlement to relief." Ashcroft v.
21 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a
22 court must accept as true all of the allegations contained in a
23 complaint is inapplicable to legal conclusions. Threadbare
24 recitals of the elements of a cause of action, supported by mere
25 conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1950
26 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A
27 complaint need not contain "detailed factual allegations," but it
28 must provide more than an "unadorned, the-defendant-unlawfully-

1 harmed-me accusation." Id. at 1949. Thus, a motion to dismiss
2 should be granted if the plaintiff fails to proffer "enough facts
3 to . . . nudge[] [its] claims across the line from conceivable to
4 plausible." Twombly, 550 U.S. at 570.

5
6 **IV. DISCUSSION**

7 **A. Breach of Contract**

8 In California, to assert a claim for breach of contract, a
9 plaintiff must plead: "(1) existence of the contract; (2)
10 plaintiff's performance or excuse for nonperformance; (3)
11 defendant's breach; and (4) damages to plaintiff as a result of the
12 breach." CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226,
13 1239 (Ct. App. 2008). In the context of a duty-to-defend action,
14 an insurer is liable for breach of contract if it fails to defend
15 "the named insured(s) and anyone else included in the policy's
16 definition of 'insured.'" Sprinkles v. Assoc. Indem. Corp., 188
17 Cal. App. 4th 69, 77 (Ct. App. 2010) (citation omitted).

18 Continental argues that Essex's breach-of-contract claim fails
19 because Essex is not named as an insured in the Policy, and cannot
20 satisfy the first breach-of-contract element -- existence of a
21 contract. Mot. at 8-9.⁴ In response, Essex argues inter alia that
22 it has alleged a plausible entitlement to relief as a "Property
23 Manager" under the Policy. Opp'n at 6.

24 The parties agree that the Policy names as insureds both the
25 Association and -- through the Endorsement -- a "Property Manager."
26 Mot. at 8, Opp'n at 6. Thus, if Essex is a "Property Manager"
27 under the Policy, it is an insured, and if no exceptions apply,

28

⁴ Continental characterizes this as a "standing" requirement. Id.

1 Continental owed a duty to defend Essex during the IndyMac
2 litigation.

3 The Court finds that the Complaint alleges sufficient facts to
4 support a plausible breach-of-contract claim. The Endorsement
5 offers a detailed definition of "Property Manager" -- it is a
6 "person" providing services "in connection with the management of
7 commercial or residential property for and at the direction of the
8 Named Entity . . . for a fee." See Policy at 12. Among the
9 enumerated services listed are "solicitation, evaluation and
10 securing tenants and management of tenant relations, collection of
11 rent, and processing evictions with respect to Named Entity's
12 property." Id. Essex alleges that through its involvement in the
13 Management Council, it initiated foreclosure proceedings against a
14 condominium owner; that it was subsequently sued for these actions
15 by IndyMac; and that Continental refused to defend Essex in the
16 IndyMac proceeding. As such, Essex has made a plausible claim that
17 it was serving as a "Property Manager" as defined under the Policy,
18 and thus was an insured.

19 Continental argues that because the 1994 Agreement
20 contemplated the hiring of a professional property manager and
21 because the Complaint does not state that Essex performed this
22 eviction "for and at the direction of" the Association or that it
23 did so "for a fee," Essex's claim should fail. See Opp'n. Essex
24 counters that these are factual issues inappropriate for a Rule
25 12(b)(6) motion, arguing: "evidence surrounding the negotiation,
26 drafting and issuance of the policy and endorsement could provide
27 additional evidence of intent to include Essex within the class of
28 Property Managers for whose benefit the endorsement was procured."

1 Opp'n at 12. The Court agrees with Essex. Essex clearly alleges
2 that it initiated the foreclosure proceedings "in its capacity as a
3 member of the Management Council" -- an entity established jointly
4 by Essex's predecessor-in-interest and the Association to collect
5 fees and manage the property. Compl. ¶ 12. Thus, it is at the
6 very least plausible that the Management Council initiated the
7 foreclosure "for and at the direction of" the Association. As for
8 Continental's "for a fee" argument, the Court finds that Essex's
9 failure to state whether it performed its Management Council duties
10 for a fee does not render its Complaint implausible, especially in
11 light of the fact that under California law, "[a]ny doubt as to
12 whether the facts establish the existence of the defense duty must
13 be resolved in the insured's favor." Montrose Chem. Corp. v.
14 Super. Ct., 6 Cal. 4th 287, 304 (1993). Continental's Motion to
15 dismiss Essex's breach-of-contract claim is DENIED.

16 **B. Declaratory Relief**

17 Essex seeks a declaration as to whether "Defendant currently
18 owes a duty to defend Essex in the IndyMac Action, which is on
19 appeal." Opp'n at 18. Continental argues that Essex's declaratory
20 relief claim should be dismissed, asserting that it is duplicative
21 of its breach-of-contract claim. Mot. at 10.

22 Declaratory relief should not be used to determine issues that
23 are already fully engaged by other causes of action. Hood v.
24 Super. Ct., 33 Cal. App. 4th 319, 324 (Ct. App. 1995). Here, a
25 declaration of the duty owed by Continental to Essex adds nothing
26 to the breach-of-contract claim asserted and likely to be resolved
27 in this action. As such, the Court GRANTS Continental's motion to
28 dismiss Essex's declaratory relief claim.

1 **C. Breach of Implied Covenant of Good Faith and Fair Dealing**

2 For Essex's bad faith claim to survive a Rule 12(b)(6) motion,
3 Essex's Complaint must allege and plead facts supporting a
4 plausible claim that Continental engaged in unreasonable conduct in
5 connection with its insurance claim. Century Sur. Co. v. Polisso,
6 139 Cal. App. 4th 922, 948 (Ct. App. 2006). Furthermore, "a breach
7 of the implied covenant of good faith and fair dealing involves
8 something more than a breach of the contract or mistaken judgment."
9 Id. at 949.

10 Essex's Complaint alleges Continental breached this covenant
11 by refusing to pay Essex benefits under the policy and failing to
12 properly investigate Essex's claim, which it claims is part of "a
13 common pattern and practice on the part of Continental with regard
14 to the manner in which it treats its insureds." Compl. ¶ 42.
15 Essex also makes a bare allegation that Continental "acted with
16 malice, fraud and/or oppression, as defined by California Civil
17 Code § 3294." Id. ¶ 44.

18 Continental argues that Essex's bad faith claim should fail
19 for the same reasons that its breach-of-contract claim should fail
20 -- namely, that there was no potential for coverage under the
21 Policy. See Mot. at 11. For the reasons given above, the Court
22 rejects this argument. However, the Court finds that the facts
23 pleaded in the Complaint do not meet the "plausible" threshold.
24 Continental's decision to deny Essex coverage alone does not
25 support a bad faith claim, given the "something more" required by
26 Century Surety Co. Once these allegations are set aside, little
27 remains to support Essex's bad faith claim, as the only allegations
28 supporting it are brief statements that Continental failed to

investigate Essex's claim as part of "a common pattern and practice." Compl. ¶ 42. The Court finds that Essex has not pleaded with the specificity required by Iqbal and Twombly. For these reasons, the Court GRANTS Continental's Motion as to Essex's bad faith claim.⁵

V. CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART Defendant Continental Casualty Company's Motion to Dismiss. Essex Marina City Club, L.P.'s First and Third Causes of Action (for declaratory relief and breach of the implied covenant of good faith and fair dealing, respectively) are DISMISSED WITHOUT PREJUDICE. Within fifteen (15) days of this Order, Essex may file an amended complaint without seeking leave of the Court.

A Status Conference is scheduled for June 24, 2011, at 10:00 a.m. in Courtroom 1, Seventeenth Floor, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, California, 94102. Parties shall file an amended joint Case Management Statement by June 17, 2011.

IT IS SO ORDERED.

Dated: May 9, 2011


UNITED STATES DISTRICT JUDGE

⁵ Essex makes new allegations of bad faith in its Opposition, stating: "Defendant played 'hot potato'," passing Essex's claim "from adjuster to adjuster," and delaying "making a coverage decision for more than two years, apparently hoping that Essex would eventually give up and not pursue its claim." Opp'n at 1. Because the Court looks to the allegations contained in the complaint alone in evaluating a Rule 12(b)(6) motion, it ignores these allegations.